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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,156	03/01/2004	John Carlson	52224/297559	1006
23370	7590	12/13/2007	EXAMINER	
JOHN S. PRATT, ESQ			ENG, DAVID Y	
KILPATRICK STOCKTON, LLP			ART UNIT	PAPER NUMBER
1100 PEACHTREE STREET			2155	
ATLANTA, GA 30309				
MAIL DATE		DELIVERY MODE		
12/13/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/790,156	CARLSON ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	DAVID Y. ENG	2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 September 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 15-17, 19, 20 and 28-41 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 19, 20 and 31 is/are allowed.  
 6) Claim(s) 15, 16, 28 and 29 is/are rejected.  
 7) Claim(s) 17, 32-33, 36, 37, 38; 30, 34-35, 39, 40 and 41 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

Claims 1-14, 18 and 21-27 have been cancelled. Newly submitted claims 36-41 have been entered. The active claims are 15-17, 19-20 and 28-41 of which Claims 16, 19, 20, 29 and 31 are independent claims.

### ***Claim Rejections - 35 USC § 112, 2<sup>nd</sup> paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 16, function of the network hub server in the distributed network management system is not clear. It is not clear what information is obtained by the hub server from the remote network server while the hub server is monitoring the remote network server. It does not appear that the hub server has any use of the weighted average computed by the means associated with the remote network server.

The remote network server has similar defect as the hub server. It does not have use of the weighted average either.

Scope of claim 16 is not clear. The claim merely recites two servers and a device interconnected for computing a piece of data called weighted average which has no use in the distributed network management system. The distributed network management system as recited in claim 16 has no meaningful function or improvement.

Claim 29 has similar defects.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16, 15, 29 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Majkowski (USP 6,564,336).

Details of the rejections have already been set forth in the last Office action. The details are incorporated herein by reference thereto.

In the communication filed on 9/27/2007, Applicants contended that Majkowski does not have polling, receiving a response and computing average for multiple periods. Polling is nothing more than an initiation for communication which is inherent in connecting of two devices such as the devices in Majkowski. As to computing weighted average, it is noted that the claims do not recite any usefulness of the average in the distributed management system. Applicants further fail to provide any argument as to why the claims are patentable distinct over the reference, that is why the average is an improvement in the distributed management system? In the absent of the argument, the weighted average is nothing but only one of the many applications which the device is able to execute.

**Allowable Claims**

Claims 19, 20 and 31 are allowed. Claims 17, 32-33, 36, 37, 38; 30, 34-35, 39, 40 and 41 will be given favorable consideration if they are rewritten in independent form.

In the communication filed on 9/27/2007,

**Final**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID Y. ENG whose telephone number is 571-272-3984. The examiner can normally be reached on M-F from 8AM to 3PM.

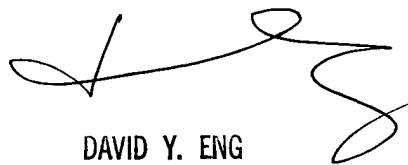
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SALEH NAJJAR, can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "DY Eng".

DAVID Y. ENG  
PRIMARY EXAMINER